

1 cautioning you about having your client  
2 represent that without having some kind of  
3 authentication, independent authentication.

4 MR. LYON: Right. And this is the  
5 authentication that we could find.

6 MS. LANCASTER: And, your Honor,  
7 this may be the authentication that the  
8 polygraph portion was dismissed, but it does  
9 not address the pornography charge that -- Mr.  
10 Titus indicated he only went once, and it had  
11 to do with pornography.

12 MR. LYON: Well, perhaps there was  
13 only one. If you want to go get the rest of  
14 the court record then I think -- your Honor,  
15 I'm sorry. If they want to go get the rest of  
16 the court record and show us there was more  
17 than one hearing, I think that's fine. They  
18 haven't done so, and they plainly not  
19 presented the entire record. This is plainly  
20 part of the record. If they want to argue  
21 that it doesn't mean anything, they're more  
22 than welcome to do it.

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1 MS. LANCASTER: Your Honor --

2 MR. LYON: But I don't understand  
3 their objection.

4 MS. LANCASTER: Well, I haven't  
5 made an objection yet. I've asked questions  
6 and pointed out that this is not really  
7 responsive to the charge that we discussed,  
8 the testimony discussed yesterday. I have no  
9 problem. It's a Benton County court record.  
10 It can come in. I just want to point out that  
11 the discussion yesterday had to do with  
12 pornography, and this doesn't say a thing  
13 about pornography.

14 MR. LYON: Your Honor, I think the  
15 record shows that. And, apparently, if  
16 counsel has no objection to admission of the  
17 document then I move for its admission, and  
18 counsel is more than welcome to argue anything  
19 that counsel wishes to argue. I'm sure there  
20 won't be any problems with counsel formulating  
21 such an argument.

22 JUDGE SIPPEL: I'm just reading to

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1 myself here, I guess. What is that? Concedes  
2 with reservations? Z is the defense attorney.  
3 The clerk said that this is a very cryptic  
4 note by the clerk. The judge denies the  
5 state's motion. That date was October 25,  
6 1996, and what we have here is an Exhibit 4 at  
7 page 45 that's signed off August 12th, 1996,  
8 saying, "Recommendation: schedule a  
9 noncompliance hearing to address these  
10 violations."

11 MS. LANCASTER: Right.

12 JUDGE SIPPEL: I have no reason to  
13 question anything about what this, unless  
14 you're going to show me other evidence, this  
15 evidence is not being objected to on the basis  
16 of its accuracy or its originality. I mean,  
17 this is not -- he gave us the flow of the  
18 correspondence, from him to the clerk, the  
19 clerk got back to him and said here's your  
20 document. It came out of the clerk's office,  
21 no question about that. It's just a question  
22 of what, you know, it is not a very concise

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1 statement of exactly what was being handled in  
2 this paper that is Exhibit 15, but I have to  
3 assume it came out as a business record that  
4 they meant to dismiss the proceeding --

5 MS. LANCASTER: Well, your Honor,  
6 it doesn't talk about all the violations --

7 JUDGE SIPPEL: I know it doesn't.  
8 I understand that. I said that it is not what  
9 we would like to see as a full and concise  
10 statement of what was transacted in that  
11 court. These courts are very busy places, and  
12 this is not, to me -- I mean, I don't have  
13 that much experience, but my experience in  
14 small state county courts are they move things  
15 along in a very, very, in a very inexpensive  
16 and a very efficient way.

17 MS. LANCASTER: Your Honor, we  
18 have no problems with it coming in for the  
19 limited purpose to address what it says. I  
20 mean, I just wanted to point out that it  
21 really doesn't address the violation, you  
22 know, all the violations that are in the --

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1 JUDGE SIPPEL: We all can read  
2 English, Ms. Lancaster. And if the burden of  
3 proof rests with the government, if you're not  
4 satisfied with the proof with respect to this,  
5 I'm taking from what I'm hearing is that  
6 counsel for Mr. Titus, Mr. Lyon, is willing to  
7 have the record left open while you can go try  
8 and find more about this. I'm not so  
9 inclined. So unless you come in early next  
10 week with some kind of a motion to produce  
11 more evidence on this, this matter is going to  
12 be closed.

13 MR. KNOWLES-KELLETT: Your Honor,  
14 at a previous conference, we discussed the  
15 possibility of rebuttal evidence at some  
16 future date.

17 JUDGE SIPPEL: That was on his  
18 part.

19 MR. KNOWLES-KELLETT: We are also  
20 considering rebuttal evidence. You said we'd  
21 consider it at some future date.

22 MS. LANCASTER: We would like to

1 present rebuttal evidence, your Honor.

2 MR. LYON: Your Honor, we were  
3 never entitled to present rebuttal evidence.  
4 They have --

5 JUDGE SIPPEL: You have the burden  
6 of proof. They have the burden of -- well,  
7 they don't have a burden. All they have to do  
8 is just respond to your proof.

9 MS. LANCASTER: Normally, we are  
10 entitled to rebut his witnesses.

11 JUDGE SIPPEL: You've never  
12 alerted me to this before.

13 MS. LANCASTER: Well, because we  
14 thought it was going to be a discussion at the  
15 end of the hearing. You said you would  
16 consider it later.

17 JUDGE SIPPEL: I was talking about  
18 --

19 MS. LANCASTER: We thought you  
20 said that. I'm sorry.

21 MR. KNOWLES-KELLETT: When the  
22 transcript said only his, we apologize. Our

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1 understanding in our discussion of it was the  
2 judge said don't bring up rebuttal until after  
3 the hearing and then he'll discuss it.' I  
4 think that our understanding, you know, was  
5 not unreasonable.

6 JUDGE SIPPEL: I'm hearing this  
7 for the very first time from your side of the  
8 table. In fact, Mr. Lyon has his proposed  
9 testimony of possible rebuttal witnesses.

10 MR. KNOWLES-KELLETT: Well, your  
11 Honor, you didn't really hear it for the first  
12 time because we asked for the test results to  
13 be delivered to our psychologist. You know,  
14 implicit in that is that we have a  
15 psychologist you haven't seen.

16 MR. LYON: Your Honor, they have  
17 had the opportunity to have those test  
18 results. They took the deposition of this  
19 witness. They reviewed the --

20 JUDGE SIPPEL: Is this Dr. Allmon?

21 MR. LYON: Yes. They reviewed the  
22 test results.

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1 MS. LANCASTER: Your Honor, I must  
2 tell you, however, that we didn't have the  
3 opportunity to hear Mr. Titus' oral testimony  
4 to the extent that he testified the last two  
5 days. And I believe that we have rebuttal  
6 evidence concerning that testimony that we  
7 would like to present.

8 MR. KNOWLES-KELLETT: Also,  
9 substantial evidence that we have never seen  
10 before came in with respect to the models used  
11 by Detective Shilling. So what we'd really  
12 like to do is see the transcript and see if  
13 there's a need for rebuttal testimony, which  
14 I thought was the procedure that was  
15 contemplated at the conference call. And I  
16 didn't see a need to discuss whether or not we  
17 would have rebuttal evidence if we were told  
18 that it would be visited after the taking of  
19 direct evidence.

20 JUDGE SIPPEL: Well, I'm just  
21 telling you this takes me totally by surprise  
22 because exactly what I said.

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1 MR. KNOWLES-KELLETT: I didn't --

2 JUDGE SIPPEL: Mr. Lyon was making  
3 a point early on in this proceeding that he  
4 might want some rebuttal. He was very serious  
5 about needing rebuttal testimony. You're  
6 putting the evidence on. You've got the  
7 burden of proof. He's the defendant.

8 MR. KNOWLES-KELLETT: I think in  
9 response to his rebuttal I said could we defer  
10 to see if we actually need rebuttal, and I  
11 intended to mean everybody's rebuttal, your  
12 Honor, on our conference call.

13 MS. LANCASTER: We certainly had  
14 no intent to pull the wool over your eyes or  
15 deceive you in any way about anything, your  
16 Honor. We just understood --

17 JUDGE SIPPEL: I didn't say that.  
18 Don't put words in my mouth on that.

19 MS. LANCASTER: Oh, I'm not. I  
20 don't mean it as putting words in your mouth.

21 JUDGE SIPPEL: Well, you certainly  
22 sound like you are. Now, look, the reason I

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1 gave you the reasons is because I didn't hear  
2 it coming from your side of the table. I  
3 heard it from him and Mr. Lyon, and he came in  
4 with proposed testimony on the point. That's  
5 all. Maybe I overlooked something. I'm going  
6 to have to set up a motion schedule.

7 MR. LYON: Your Honor, if I could  
8 be heard on this, as to Mr. Titus' testimony  
9 again, they took his deposition. To the  
10 extent his testimony is inconsistent with  
11 anything in his deposition, they certainly  
12 have the right to impeach him. They've had  
13 his written testimony for months. And, again,  
14 they did not choose to have him examined by a  
15 psychologist. They knew that Dr. Allmon was  
16 preparing a psychosexual evaluation. They've  
17 had it, again, for months. My request for  
18 rebuttal testimony was solely in connection  
19 with the use of actuarials. I think it is  
20 very apparent from the testimony of the  
21 government's own witness that there are severe  
22 problems with the Washington actuarial test.

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1 At this point, I don't think that there's  
2 anything more I need to say about actuarials.  
3 In fact, out of the witness' own mouth, he  
4 admits that the agency that the state  
5 commissioned to examine the tool found severe  
6 problems with it. So at this point, I don't  
7 see the need for rebuttal.

8 And I think, yes, I put on a  
9 direct case. I wasn't required to, but that  
10 direct case has been exchanged for months.

11 JUDGE SIPPEL: I'm hearing it.  
12 Obviously, both sides feel very strongly about  
13 their positions. The only thing I can do, and  
14 I'm sorry to have to put you through the  
15 expense of this, is to let you prepare and  
16 file a motion for leave to put on a rebuttal  
17 case. Be very specific in terms of witnesses  
18 and exactly what you intend to prove and why  
19 and show me the justification and transcript  
20 references. You may have an opportunity, of  
21 course, to respond to it. This is all going  
22 to be a one-way street. I don't want this

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1 back and forth no reply pleadings on this.

2 MR. LYON: Okay. Understand, your  
3 Honor, I may feel the need after seeing what  
4 they intend to present, I may feel the need to  
5 present a witness in response. And I think,  
6 again, I would have that right.

7 JUDGE SIPPEL: You mean rebut or  
8 rebuttal, a surrebuttal I think they call it -  
9 -

10 MR. LYON: Yes, your Honor.

11 JUDGE SIPPEL: -- or we call it.

12 MR. LYON: I hope that won't be  
13 necessary.

14 JUDGE SIPPEL: I guess it's a  
15 judge's worst dream. All right. I'm  
16 listening very carefully to what everybody is  
17 saying here. I'm just going to have to put it  
18 on that basis. You're going to have to  
19 justify it, and you've got the burden on the  
20 motion of preponderance of persuasion. And  
21 how much time do you need to put the motion  
22 together?

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1 MR. LYON: I guess they'll need  
2 the transcript first, your Honor.

3 JUDGE SIPPEL: And that comes in  
4 when? Ten days?

5 COURT REPORTER: Ten days from  
6 today for this session, and I think the 25th  
7 is --

8 JUDGE SIPPEL: The 25th is next  
9 Friday.

10 COURT REPORTER: That's the one  
11 for the 14th. And then the session from the  
12 15th would be the 28th, and today's session  
13 would be the 29th. We have a ten-day  
14 turnaround time.

15 JUDGE SIPPEL: All right. Let's  
16 go off the record for just a minute. Let's  
17 count days here without running any tab.

18 (Whereupon, the foregoing matter  
19 went off the record at 6:24 p.m. and went back  
20 on the record at 6:28 p.m.)

21 JUDGE SIPPEL: Last item of  
22 business, I contemplated accepting the

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1 National Guidelines in by way of official  
2 notice. And after on and off-the-record  
3 discussions with counsel and considering it  
4 myself, I don't think we need to put this in  
5 the record. That's all. So I'm not going to  
6 burden the record with this hefty set of  
7 guidelines, but I appreciate having them  
8 because there may be a purpose for referring  
9 to them in some way, shape, or form. Thank  
10 you very much.

11 That concludes the hearing part of  
12 this case, unless, unless I have to set up a  
13 rebuttal schedule. And I will wait until I  
14 determine the rebuttal motion before I set  
15 dates on proposed findings and conclusions.  
16 All right? Does everybody agree with that?

17 MS. LANCASTER: Yes, sir.

18 JUDGE SIPPEL: All right. So  
19 that's it. That's it. Nothing more.

20 (Whereupon, the foregoing matter  
21 was concluded at 6:29 p.m.)  
22

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David L. Titus

Name of Hearing

EB DOCKET NO. 07-13

Docket No. (if applicable)

445 12<sup>th</sup> STREET, S.W., WASHINGTON, D.C.

Place of Hearing

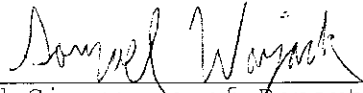
July 16, 2008

Date of Hearing

We, the undersigned, do hereby certify that the foregoing pages, numbers 771 through 1134, inclusive, are the true, accurate and complete transcript prepared from the reporting by Samuel Wojack (Reporter's Name) in attendance at the above identified hearing, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription statement of Work and have verified the accuracy of the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the hearings and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the hearing or conference.

July 30, 2008

Samuel Wojack



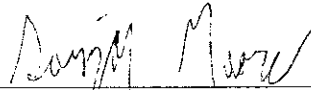
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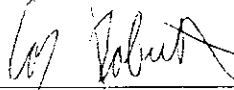
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